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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-974

STATE OF MINNESOTA,
Petitioner,

v.

BERNARD CLARK, *et al.*,
Respondents.

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE AND BRIEF AMICI CURIAE OF THE COUNTIES OF BELTRAMI, CARLTON, CLEARWATER, HUBBARD, ITASCA, KOOCHICHING, LAKE OF THE WOODS, MARSHALL, PENNINGTON, POLK, RED LAKE, AND ROSEAU, MINNESOTA IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

AUREL L. EKVALL
Clearwater County Attorney
Bagley, Minnesota 56621

TOM D. TOBIN
Tobin Law Offices, P.C.
422 Main Street
Winner, South Dakota 57580

WILLIAM W. SHAKELY
DAVID ALBERT MUSTONE
Tobin Law Offices, P.C.
1150 Seventeenth
Street, N.W.
Suite 607
Washington, D.C. 20036

Attorneys for Amici Curiae

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MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE

Pursuant to Rule 42(3), the Counties of Beltrami, Carlton, Clearwater, Hubbard, Itasca, Koochiching, Lake of the Woods, Marshall, Pennington, Polk, Red Lake, and Roseau, Minnesota, move that the Court grant leave to file the attached brief amici curiae in support of the Petition for Writ of Certiorari in the above-captioned case. The Petitioner has consented to the filing of this brief, but the Respondents have refused to give their consent.

With the right to hunt and fish free of State regulation as the focal point, the primary issue involved in this case is whether the White Earth Reservation, as established by the Treaty of March 19,

1867, 16 Stat. 719, was disestablished by the Act of January 14, 1889, 25 Stat. 642, the so-called "Nelson Act". Because all of Mahnomen County and a significant portion of Clearwater County is located within the boundaries of the 1867 Reservation, this case is of particular importance to both these Counties.[1] In addition, a ruling as to the effect of the Nelson Act on the 1867 White Earth Reservation will necessarily have an impact on the other historic reservations that were affected by that Act. Since approximately two-thirds of the Red Lake Reservation (as established by the Treaty of October 2, 1863, 13 Stat. 667), essentially all of what was known as the Greater Leech Lake Reservation,[2] the Fond du Lac Reservation (as established by the Treaty of September 30, 1854, 10 Stat. 1109), the Bois Fort (Nett Lake) Reservation (as established by the Treaty of April 7, 1866, 14 Stat. 765), and the Deer Creek Reservation (as established by Executive Order of June 30, 1883), were ceded pursuant to the Nelson Act, this case is also of great importance to the other Amici Counties. The 1863 Red Lake Reservation encompasses a significant portion of the Counties of Beltrami, Koochiching, Lake of the Woods, Pennington, and Polk; the greater Leech Lake Reservation encompasses a significant portion of the Counties of Hubbard, Cass, and Itasca; the 1854 Fond du Lac

[1] A significant portion of a third county, Becker County, is also located within the 1867 Reservation. Because the State of Minnesota is acting on behalf of Becker County in this case (see Petition at 6), that County will not be participating as Amicus here.

[2] The Greater Leech Lake Reservation includes the historic Leech Lake, Lake Winnebagoshish, Cass Lake, and White Oak Point Reservations, as established by the Treaty of February 22, 1855, 10 Stat. 1165, and subsequently modified by the Treaties of May 7, 1864, 13 Stat. 693, and March 19, 1867, *supra*.

Reservation encompasses a significant portion of the Counties of Carlton and St. Louis;[3] the 1866 Bois Fort (Nett Lake) Reservation encompasses a significant portion of the Counties of Koochiching and St. Louis; and the 1883 Deer Creek Reservation encompasses a significant portion of Itasca County.

It is important to note that the significance of this case to the Amici Counties goes far beyond the issue of State regulation of Indian hunting and fishing activities on non-trust lands within the confines of the historic reservations involved. Thus, a ruling that the Nelson Act did not disestablish the 1867 White Earth Reservation and the other historic reservation areas affected by that Act will deprive both the State and the Amici Counties of a significant amount of governmental authority which they have heretofore exercised over those lands. That is, because the decision of the Minnesota Court could be read to require that all the historic reservations affected by the Nelson Act be considered to presently exist,[4] that decision, if permitted to stand, will present serious and difficult jurisdictional problems, beyond hunting and fishing, to the State and its local governments within those reservation areas, even

[3] The County of St. Louis did not have an opportunity to fully examine the merits of the issues presented prior to the printing of this Motion. The Office of the Clerk will be advised directly if the County elects to join in the views expressed herein.

[4] As noted by the State (*see* Petition at 9), the Minnesota Supreme Court in this case expressly reaffirmed the conclusion it had reached in an earlier case involving the historic Leech Lake Reservation (*State* v. *Forge*, 262 N.W. 2d 341 (Minn. 1977), *appeal dismissed*, 435 U.S. 919 (1978)), that "congressional intent to terminate [reservation status] is lacking from the Nelson Act...." *State* v. *Clark*, 282 N.W. 2d 902, 906 (Minn. 1979) (citations omitted).

with the application of Public Law 280.[5] In short, the ruling of the State Supreme Court in this case, if permitted to stand, could well lead to significant limitations upon the State's and the Amici Counties' regulatory and taxing authority within the historic reservation areas involved.

Respectfully submitted,

AUREL L. EKVALL
Clearwater County Attorney
Bagley, Minnesota 56621

TOM D. TOBIN
Tobin Law Offices, P.C.
422 Main Street
Winner, South Dakota 57580

WILLIAM W. SHAKELY
DAVID ALBERT MUSTONE
Tobin Law Offices, P.C.
1150 Seventeenth Street, N.W.
Suite 607
Washington, D.C. 20036

Attorneys for Amici Curiae

[5] Public Law 280 was automatically extended to all Indian Country within Minnesota, except the Red Lake Reservation. *See* 18 U.S.C. § 1162; 28 U.S.C. § 1360. Public Law 280, however, does not encompass the taxing or regulatory authority of the State and local governments. *See, e.g., Bryan* v. *Itasca County, Minnesota*, 426 U.S. 373 (1976); *Santa Rosa Band of Indians* v. *Kings County*, 532 F.2d 655, 661-63 (9th Cir. 1976), *cert. denied*, 429 U.S. 1038 (1977). Moreover, State and local regulation of existing hunting and fishing rights is expressly exempted from coverage under Public Law 280. 18 U.S.C. § 1162(b). Importantly, because Public Law 280 does not apply to the Red Lake Reservation, the jurisdictional implications for the area of that historic reservation affected by the Nelson Act will include civil and criminal jurisdiction as well.

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BRIEF AMICI CURIAE OF THE COUNTIES OF BELTRAMI, CARLTON, CLEARWATER, HUBBARD, ITASCA, KOOCHICHING, LAKE OF THE WOODS, MARSHALL, PENNINGTON, POLK, RED LAKE, AND ROSEAU, MINNESOTA IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

INTEREST OF AMICI CURIAE

The interest of the Amici Counties is fully set forth in the foregoing motion.

STATEMENT OF THE CASE

The Amici Curiae adopt the Statement of the Case set forth in the Petition for Writ of Certiorari.

ARGUMENT

Introduction

In recent years, this Court has twice confronted the question of the disestablishment of Indian reservations, and has set forth in detail the proper judicial approach to such questions. *See Rosebud Sioux Tribe* v. *Kneip*, 430 U.S. 584 (1977) and *DeCoteau* v. *District County Court*, 420 U.S. 425 (1975). In both cases, the Court concluded that the reservation areas involved in these cases had been disestablished by Acts of Congress enacted in the late nineteenth and early twentieth centuries.

Nevertheless, the Minnesota Supreme Court, while professing to follow the principles expressed in *DeCoteau* and *Rosebud*, in effect disregarded those decisions by holding, in spite of clear congressional intent to the contrary, that the White Earth Reservation had not been disestablished by the Nelson Act. *See State* v. *Clark*, 282 N.W.2d 902 (Minn. 1979). The Minnesota court consequently ruled that the State lacked jurisdiction over hunting and fishing by Indians within the 1867 Reservation boundaries.[1] In so ruling, the Minnesota Supreme Court failed to adequately consider the various factors which constitute the analysis mandated by this Court and improperly ignored the manifest intent of Congress to disestablish the White Earth Reservation.

[1] This ruling apparently did not apply to the four townships which were ceded pursuant to the Nelson Act. *See State* v. *Clark*, 282 N.W. 2d 902, 906 n.13 (Minn. 1979).

I. THE DECISION OF THE SUPREME COURT OF MINNESOTA INCORRECTLY DISREGARDS CONGRESSIONAL INTENT TO DISESTABLISH THE WHITE EARTH RESERVATION.

It is well settled that in determining questions of the disestablishment of Indian reservations or portions thereof by congressional action, the intent of Congress controls. *Rosebud Sioux Tribe* v. *Kneip*, 430 U.S. 584, 586 (1977); *DeCoteau* v. *District County Court*, 420 U.S. 425, 442, 444 (1975). As discussed in greater detail *infra*, the Minnesota court failed to use the approach mandated by this Court in its treatment of the disestablishment issue. A complete analysis of the relevant material, on the other hand, leads to the unavoidable conclusion that the underlying purpose of the Nelson Act was the disestablishment of the White Earth Reservation.

The Nelson Act provided for the appointment of a commission to negotiate with the various Chippewa bands for the cession of their reservations to the United States. With particular regard to the White Earth Reservation, Section 1 of the Act provided that the commission negotiate with the bands for

> the complete cession and relinquishment in writing of all their title and interest . . . to all and so much of [the Red Lake and White Earth] reservations as in the judgment of said commission is not required to make and fill the allotments required by this and existing acts. . . .

The Act further provided that the "acceptance and approval of such cession and relinquishment by the

President . . . shall operate as a complete extinguishment of the Indian title. . . . ." As this Court has held, this type of cession language is "precisely suited" to effect disestablishment. *Rosebud*, *supra* at 597; *DeCoteau*, *supra* at 445.

Following its enactment, the Nelson Act scheme was presented to the White Earth Band, which, after some negotiation, accepted the proposed cession. An agreement was then entered into whereby the Band ceded all interest in four of the townships of the Reservation and the remaining thirty-two townships were designated as the land from which allotments would be made pursuant to the Act. H.R. Exec. Doc. No. 247, 51st Cong., 1st Sess. (1890). The Band thus accepted the terms of the Act, and the underlying purpose of disestablishment embodied in the Nelson Act was thereby carried into effect.

The legislative history of the Nelson Act, which is accurately summarized by the State, Petition at 10-12, clearly indicates that the Act was intended to disestablish the reservations involved, to allot parcels of land to individual Indians, and to open the remainder to non-Indian settlement. That this was the prevailing perception of the Act at the time it was passed is confirmed not only by the relevant committee reports, but also by a letter of the Commissioner of Indian Affairs to the Secretary of the Interior dated March 6, 1888. *See* Brief of Amici Curiae, Appendix F at 225a-33a, *State* v. *Clark*, 282 N.W.2d 902 (Minn. 1979). In that letter, the Commissioner voiced objections to the proposed legislation on several grounds, one of which was that the measure would terminate the reservation status of the

White Earth Reservation. This letter reflects the contemporaneous understanding of the officer charged with the execution of the statute and as such is entitled to considerable weight. *See Zuber* v. *Allen*, 396 U.S. 168, 192 (1969). *Cf. Rosebud Sioux Tribe* v. *Kneip*, 430 U.S. at 602-03 (presidential proclamation).

The circumstances surrounding the passage of the Nelson Act eliminate any doubt as to its intended effect. The prevailing federal Indian policy of the era in which the Act was passed was essentially twofold: civilization of the Indian population and reduction of existing Indian reservations. As delineated in the Annual Reports of the Secretary of the Interior and the Commissioner of Indian Affairs during this period, civilization of the Indians was to be accomplished primarily by education, allotment of lands in severalty, and destruction of tribal relations. *See, e.g.*, [1885] Sec'y Interior Ann. Rep. 25-28; [1890] Com. Ind. Affairs Ann. Rep. VI, XXXIX; [1891] Com. Ind. Affairs Ann. Rep. 3-9. At the same time, it was the policy of the federal government to reduce the amount of existing Indian reservation lands in order to make the surplus lands—that is, the lands not needed by the Indians themselves—available for non-Indian settlement. *See, e.g.*, [1890] Com. Ind. Affairs Ann. Rep. VI, XXXVII-XXXIX; [1891] Com. Ind. Affairs Ann. Rep. 8, 44-47. Although this policy has since fallen into disfavor, it was nevertheless in force at the time of the passage of the Nelson Act and thus is of utmost significance in determining the question of congressional intent.

Against this background, it is clear that the underlying purpose of the Nelson Act was the dis-

establishment of the various reservations affected. Both this Court and the Court of Claims have stated that the Act was enacted in furtherance of the federal Indian policy summarized above. *See Wilbur* v. *United States ex rel. Kadrie*, 281 U.S. 206, 208-09 (1930); *Chippewa Indians of Minnesota* v. *United States*, 88 Ct.Cl. 1, 26 (1938, supp. op. 1939), *aff'd*, 307 U.S. 1 (1939). The retention of reservation status is simply incompatible with the objectives of the destruction of tribal relations and the assimilation of the Indian into non-Indian society. The radical departure from this policy suggested by the Minnesota Supreme Court is inconceivable in the absence of any supporting legislative history.

In furtherance of this prevailing policy, Congress in 1887 passed the General Allotment Act, Act of February 8, 1887, 24 Stat. 388 (the so-called Dawes Act), which provided for individual allotments and the disposal of surplus lands. Following the passage of the General Allotment Act, the opening of reservation lands occurred much more rapidly than before. *See, e.g.*, [1892] Sec'y Interior Ann. Rep. VII, XXXIII. Certain of the surplus land acts disposed of only a particularly described portion of the surplus lands, and effected a cession of that portion, with the remainder becoming a "diminished" reservation. *See, e.g.*, Act of March 3, 1891, 26 Stat. 989, 1016, 1018, 1026, 1029, 1032, 1039; Act of April 23, 1904, 33 Stat. 254. *See also Rosebud Sioux Tribe* v. *Kneip*, 430 U.S. at 586-87; *DeCoteau* v. *District County Court*, 420 U.S. at 439, 446. Other surplus land statutes, however, disposed of *all* lands not needed for allotments. *See, e.g.*, Act of March 3, 1891, 26 Stat. 909, 1022, 1035; Act of June 6, 1900, 31 Stat. 676. In these instances, the

reservations were disestablished by the statutes. *See, e.g., DeCoteau*, 420 U.S. at 439, 445-47; *Ellis* v. *Page*, 351 F.2d 250, 251-52 (10th Cir. 1965); *Tooisgah* v. *United States*, 186 F.2d 93, 97-98 (10th Cir. 1950).

It is clear that the Nelson Act falls in the latter category, and the White Earth Reservation was therefore disestablished, not diminished. Section 1 of the Act provided for the "complete cession and relinquishment" of all title and interest to "all and so much" of the White Earth Reservation "as in the judgment of the said commission is not required to make and fill the allotments required by this and existing acts." There was therefore to be no remaining diminished reservation but a complete cession of all land not needed for allotments. In this respect, the Nelson Act is very similar to the 1891 cession act interpreted in *DeCoteau* v. *District County Court, supra*, which provided, in relevant part, as follows:

> The Sisseton and Wahpeton bands of Dakota or Sioux Indians hereby *cede, sell, relinquish, and convey to the United States all their claim, right, title, and interest in and to all the unallotted lands within the limits of the reservation set apart to said bands of Indians as aforesaid remaining after the allotments and additional allotments* provided for in article four of this agreement shall have been made.

Act of March 3, 1891, 26 Stat. 1035 (emphasis added). This language, which is identical in substance to the corresponding language in the Nelson Act, was held by this Court in DeCoteau to be "precisely suited" to disestablishment. 420 U.S. at 445-46.

In part because the Indians from the other reservations (except Red Lake) were to be removed to White Earth for the purpose of making allotments, the Commissioners appointed under the Nelson Act to negotiate with the Chippewas determined that a major part of the White Earth Reservation would be required for allotments, and therefore drew up a cession agreement which provided for the cession of four specified townships. The fact that the Commissioners reserved a contiguous area for allotments does not, however, support the conclusion that the Reservation was diminished rather than disestablished. Neither the Commissioners nor the Indians could alter the clear intent of Congress to cede all surplus lands and disestablish the Reservation. As the State has ably argued in its Petition, at 12-13, the proposal made to the Indians was not open to negotiation of its terms but could only be accepted or refused. All indications from the transcript of the negotiations are that the Indians, before entering into the agreement, understood the import of the proposed cession. *See* H.R. Exec. Doc. No. 247, 51st Cong., 1st Sess. (1890). Even if the Commissioners or the Indians had desired the retention of a diminished reservation, they could not have done so under the mandate given by Congress in Section 1 of the Nelson Act. Therefore, the cession provided for in the agreement can only be the same as that called for in the Act—that is, the complete cession of all lands not necessary for allotments.[2] With the subsequent Presi-

[2] In light of the language of the Nelson Act, this argument would be of equal applicability to the Red Lake Reservation. This need not be confronted, however, since the unceded portion of the Red Lake Reservation was never allotted, *see, e.g., Chippewa Indians of Minnesota* v. *United States*, 90 Ct.Cl. 140,

(*footnote continues*)

dential approval, the Act was fully implemented and the underlying purpose of disestablishment was thereby carried into effect.

Importantly, the Respondents themselves have conceded that the Nelson Act provided for the cession of all the Reservation except that required to make allotments. Answer to Petition for Rehearing at 5, *State* v. *Clark*, 282 N.W.2d 902 (Minn. 1979). Moreover, a number of decisions of this Court have characterized the Act in a similar fashion. *See, e.g., Chippewa Indians of Minnesota* v. *United States*, 301 U.S. 358, 362 (1937); *Wilbur* v. *United States ex rel. Kadrie*, 281 U.S. 206, 208-09 (1930); *LaRoque* v. *United States*, 239 U.S. 62, 65 (1915); *United States* v. *Mille Lac Band of Chippewa Indians*, 229 U.S. 498, 503 (1913); *Fairbanks* v. *United States*, 223 U.S. 215, 217-18 (1912). As discussed *supra*, this type of cession statute has consistently been held to have the effect of disestablishment, not diminishment.

Other judicial treatment of the Nelson Act confirms this interpretation. The United States District Court for the District of Minnesota has interpreted the purpose of the Act to have been to "restore the land to the public domain and open it to settlement by whites." *United States* v. *Minnesota*, 466 F. Supp. 1382, 1387 (D. Minn. 1979), *aff'd per curiam sub nom. Red Lake Band of Chippewa Indians* v. *Minnesota*, No.

(*footnote continued*)

144 (1940), and since the Act of February 20, 1904, 33 Stat. 46, which ceded the western portion of the area reserved by the Chippewa Commission for allotments, expressly recognized the area retained by the Red Lake Indians as the "diminished Red Lake Reservation." *See also Red Lake Band of Chippewa Indians* v. *Minnesota*, No. 79-1420 (8th Cir., January 31, 1980).

79-1420 (8th Cir., January 31, 1980). The restoration of reservation lands to the public domain is synonymous with disestablishment. *See Rosebud Sioux Tribe* v. *Kneip*, 430 U.S. at 589 n.5; *DeCoteau* v. *District County Court*, 420 U.S. at 426-27, 446, 448-49.

The jurisdictional history of the 1867 White Earth Reservation subsequent to passage of the Nelson Act strongly supports a conclusion that the Reservation was disestablished. The long-standing policy of the State of Minnesota to enforce the State's fish and game laws against the Indians within the Reservation except on tribal lands and allotted trust lands apparently went unchallenged by the United States until the last several years. *See* Brief of Amici Curiae at 54-56 and material cited therein, *State* v. *Clark*, 282 N.W.2d 902 (Minn. 1979). To the extent that the administrative and congressional treatment of the disputed area supports an opposite conclusion, it is of little force since it is virtually identical to that of the Lake Traverse Reservation, found to have been disestablished in *DeCoteau*. *See* Brief of Amici Curiae at 59-63, *State* v. *Clark*, *supra*.

Under *DeCoteau* and *Rosebud*, there can be no doubt as to the effect of the Nelson Act. That Act clearly disestablished the 1867 White Earth Reservation, and the decision of the Minnesota Supreme Court is therefore erroneous.

II. THE DECISION OF THE SUPREME COURT OF MINNESOTA IS INCONSISTENT WITH THE DECISIONS OF THIS COURT.

It is clear from the opinion of the Minnesota court that while it acknowledged the decisions in *DeCoteau* and *Rosebud*, it did not undertake the

methodical inquiry mandated by those decisions, but instead relied heavily on the decision in *State* v. *Forge*, 262 N.W.2d 341 (Minn. 1977), appeal dismissed, 435 U.S. 919 (1978). *State* v. *Clark*, 282 N.W.2d 902, 905-908 (Minn. 1979). An examination of the court's opinion in *Forge* reveals no indication that the court there used the approach required by *DeCoteau* and *Rosebud*. Indeed, the opinion contains no mention of those cases but only the unsupported conclusion that the Nelson Act did not disestablish the Leech Lake Reservation. 262 N.W.2d at 346. Because the Minnesota court failed to use the required approach to the issue of disestablishment of the White Earth Reservation, its conclusions regarding the effect of the Nelson Act on the White Earth Reservation are incorrectly reached and lack the necessary support.

Furthermore, the Minnesota court has disregarded the particular relevance of this Court's decision in *DeCoteau*, which involved circumstances so similar as to be controlling here. While *DeCoteau* involved a different reservation and statute, the conclusions reached by the Court apply with equal strength to the 1867 White Earth Reservation, and there are no significant grounds for distinguishing *DeCoteau* and arriving at a different result in the instant case.

The only distinction drawn by the Minnesota court between the instant case and *DeCoteau* is its poorly substantiated assertion that the White Earth Band desired to keep their reservation intact except for the four ceded townships. *See State* v. *Clark*, 282 N.W. 2d at 908. Contrary to the court's conclusion, it

is unclear exactly what was desired by a majority of the Band. What is clear from the transcript is that the Indians understood and agreed to the terms of the Act—that is, that the four surplus townships would be sold and that the Indians would receive individual allotments on the remainder.[3]

Ideally, the *Rosebud* and *DeCoteau* decisions should have settled the law regarding this recurring problem of reservation status. Nevertheless, confusion and contradiction persist. The Eighth Circuit, for example, has taken an inconsistent approach to the case before it, holding that some reservation areas were disestablished and others were not, without articulating clear reasons for distinguishing among them, and without adequately reconciling its decisions with those in *Rosebud* and *DeCoteau*. *Compare Red Lake Band of Chippewa Indians* v. *Minnesota*, No. 79-1420 (8th Cir., January 31, 1980) and *United States ex rel. Cook* v. *Parkinson*, 525 F. 2d 120 (8th Cir. 1975), *cert. denied*, 430 U.S. 982 (1977) *with United States* v. *Dupris*, No. 78-1575 (8th Cir., November 27, 1979) and *United States* v. *Long Elk*, 565 F.2d 1032 (8th Cir. 1977). *Cf. United States* v. *Dupris*, No. 78-1575 (8th Cir., November 27, 1979) (McMillian, J., dissenting); *Stankey* v. *Waddell*, 256 N.W. 2d 117 (S.D. 1977) (state court, following *Rosebud* and *DeCoteau*, reaches conclusion opposite to that in *Dupris*, regarding same reservation). It has therefor become necessary that this Court definitively restate and clarify the law applicable to questions of reservation status, so as to eliminate confusion and put an end to the inconsistent and often incorrect interpretations of this Court's decisions.

[3] Since the negotiations followed the passage of the cession act, unlike the negotiations in *DeCoteau*, they are of very limited utility in determining congressional intent.

Nowhere is this problem more evident than in the instant case. By disregarding unmistakable indications of congressional intent, and by failing to use the analysis required for cases of this kind, the Minnesota Supreme Court has done violence to the principles expressed by the Court in *Rosebud* and *DeCoteau*. This error is in need of correction because of the far-reaching implications of this case, which bear not only on the jurisdiction of the State and Counties over the area involved in this case, but also on jurisdictional questions on other reservations both within and without the State of Minnesota.

III. THE DECISION OF THE SUPREME COURT OF MINNESOTA IS INCONSISTENT WITH THE DECISION OF THE EIGHTH CIRCUIT COURT OF APPEALS IN *RED LAKE BAND OF CHIPPEWA INDIANS* v. *MINNESOTA*.

On January 31, 1980, while this brief was being prepared, the United States Court of Appeals for the Eighth Circuit rendered a decision in *Red Lake Band of Chippewa Indians* v. *Minnesota*, No. 79-1420 (8th Cir., January 31, 1980). While the timing of the decision made it impossible to adequately incorporate this decision into the foregoing discussion, the ruling is nevertheless of utmost importance and merits separate treatment because it is in direct conflict with the decision of the Minnesota Supreme Court in the case at hand.

In a brief *per curiam* decision, the Eighth Circuit in *Red Lake* affirmed the decision of the District Court in *United States* v. *Minnesota*, 466 F. Supp. 1382 (D. Minn. 1979), and stated that the Red Lake Reservation had been diminished by the Nelson Act.

(See note 2, *supra.*) In so doing, the Eight Circuit in effect adopted the rationale of the District Court decision, which stated, *inter alia*, that the purpose of the Nelson Act was to restore the reservation area in question to the public domain. 466 F. Supp. at 1387. As noted in Section I of this brief, restoration to the public domain is synonymous with disestablishment. *See Rosebud*, 430 U.S. at 589 n.5; *DeCoteau*, 420 U.S. at 426-27, 446, 448.

The Eighth Circuit's conclusion that the Nelson Act resulted in the disestablishment of the portion of the Red Lake Reservation affected by the Act is in direct conflict with the decision of the Minnesota Supreme Court in the case at hand. This conflict between state and federal courts on an issue of this magnitude necessitates resolution by this Court.

A copy of the Eighth Circuit's decision in *Red Lake* will be forwarded to the Court as soon as it is received by counsel for the Amici Curiae.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted. The matter should be scheduled for argument on the merits, or in the alternative, be remanded to the Supreme Court of Minnesota for further consideration in light of *DeCoteau* v. *District County Court*, 420 U.S. 425 (1975) and *Rosebud Sioux Tribe* v. *Kneip*, 430 U.S. 584 (1977). *See Appawora* v. *Brough*, 431 U.S. 901 (1977).

Respectfully submitted,

AUREL L. EKVALL
Clearwater County Attorney
Bagley, Minnesota 56621

TOM D. TOBIN
Tobin Law Offices, P.C.
422 Main Street
Winner, South Dakota 57580

WILLIAM W. SHAKELY
DAVID ALBERT MUSTONE
Tobin Law Offices, P.C.
1150 Seventeenth Street, N.W.
Suite 607
Washington, D.C. 20036

Attorneys for Amici Curiae